

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JASON SMITH,

Plaintiff,

v.

DR. RACHEL ROSS, et al.,

Defendant.

Case No. 19-02119 BLF (PR)

**ORDER DIRECTING PLAINTIFF  
TO PROVIDE MORE  
INFORMATION FOR UNSERVED  
DEFENDANT RACHEL ROSS**

Plaintiff, a state prisoner at the Correctional Training Facility (“CTF”) in Soledad, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against CTF personnel. After an initial review, the Court found the complaint stated a cognizable claim under the Eighth Amendment for deliberate indifference to serious medical needs. Dkt. No. 4. Plaintiff has filed notice that he wishes to proceed solely on the Eighth Amendment claim. Dkt. No. 5.

On October 23, 2019, the document mailed to the only remaining Defendant, Dr. Rachel Ross, was returned unexecuted. Dkt. No. 14. The mail to Defendant specifically indicates that she is “no longer with CTF.” *Id.* Although a plaintiff who is incarcerated and proceeding *in forma pauperis* may rely on service by the Marshal, such plaintiff “may not remain silent and do nothing to effectuate such service”; rather, “[a]t a minimum, a

1 plaintiff should request service upon the appropriate defendant and attempt to remedy any  
2 apparent defects of which [he] has knowledge.” *Rochon v. Dawson*, 828 F.2d 1107, 1110  
3 (5th Cir. 1987).

4 On November 18, 2019, the Court issued an order directing Plaintiff to provide  
5 more information for Defendant Ross. Dkt. No. 16. On December 2, 2019, Plaintiff  
6 responded with an address for Defendant Ross in Rancho Cordova. Dkt. No. 20. On  
7 September 22, 2020, the Court issued a summons and directed the Marshal to serve the  
8 complaint on Defendant Ross at the address provided by Plaintiff. Dkt. No. 55. When  
9 there was no response, the Court ordered personal service on Defendant Ross on May 7,  
10 2021. Dkt. No. 58. On July 29, 2021, the summons was returned as unexecuted as to  
11 Defendant Ross, with a notation, “Wrong address, Suite 210 is empty office space.” Dkt.  
12 No. 62.

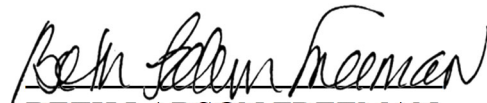
13 Plaintiff’s complaint has been pending for over 90 days, and thus, absent a showing  
14 of “good cause,” claims against Defendant Ross are subject to dismissal without prejudice.  
15 See Fed. R. Civ. P. 4(m). Plaintiff must remedy the situation by providing more  
16 information regarding Defendant Ross’ current whereabouts or face dismissal of his claims  
17 against this Defendant without prejudice. See *Walker v. Sumner*, 14 F.3d 1415, 1421-22  
18 (9th Cir. 1994) (holding prisoner failed to show cause why prison official should not be  
19 dismissed under Rule 4(m) where prisoner failed to show he had provided Marshal with  
20 sufficient information to effectuate service).

21 For the foregoing reasons, the Court orders Plaintiff to file a notice providing the  
22 Court with more information regarding the current whereabouts for **Defendant Dr. Rachel**  
23 **Ross such** that the Marshal can effect service. If Plaintiff fails to provide the Court with  
24 the information requested **within twenty-eight (28) days** of the date this order is filed,  
25 Plaintiff’s claim against Defendant Ross shall be dismissed without prejudice pursuant to  
26 Rule 4(m) of the Federal Rules of Civil Procedure.

United States District Court  
Northern District of California

**IT IS SO ORDERED.**

Dated: August 26, 2021



BETH LABSON FREEMAN  
United States District Judge